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HOUSE BILL 506

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Richard P. Cheney

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REVOKING DRIVER'S LICENSE AND ALLOWING IGNITION INTERLOCK LICENSE AFTER CONVICTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED. -- The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen years of age or over who is enrolled in and attending or has completed a driver education course that includes a DWI

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1 education and prevention component approved by the bureau or
2 offered by a public school;

3 (2) a provisional license to any person
4 fifteen years and six months of age or older:

5 (a) who has completed a driver education
6 course approved by the bureau or offered by a public school
7 that includes a DWI education and prevention component and has
8 had an instruction permit for at least six months; and

9 (b) who has successfully completed a
10 practice driving component;

11 (3) a driver's license to any person sixteen
12 years and six months of age or older:

13 (a) who has had a provisional license
14 for the twelve-month period immediately preceding the date of
15 the application for the driver's license;

16 (b) who has complied with restrictions
17 on that license;

18 (c) who has not been convicted of a
19 traffic violation that was committed during the ninety days
20 prior to applying for a driver's license; and

21 (d) who has not been adjudicated for an
22 offense involving the use of alcohol or drugs during that
23 period and who has no pending adjudications alleging an offense
24 involving the use of alcohol or drugs at the time of ~~his~~ the
25 person's application; and

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1 (4) to any person thirteen years of age or
2 older who passes an examination prescribed by the division, a
3 license restricted to the operation of a motorcycle, provided:

4 (a) the ~~[motor]~~ motorcycle is not in
5 excess of one hundred cubic centimeters displacement;

6 (b) no holder of an initial license may
7 carry any other passenger while driving a motorcycle; and

8 (c) the director approves and certifies
9 motorcycles as not in excess of one hundred cubic centimeters
10 displacement and by rule provides for a method of
11 identification of such motorcycles by all law enforcement
12 officers;

13 B. whose license or driving privilege has been
14 suspended or denied, during the period of suspension or denial,
15 or to any person whose license has been revoked, except as
16 provided in Section 66-5-32 NMSA 1978 and the Ignition
17 Interlock Licensing Act;

18 C. who is ~~[an]~~ a habitual drunkard, ~~[an]~~ a habitual
19 user of narcotic drugs or ~~[an]~~ a habitual user of any drug to a
20 degree that renders ~~[him]~~ the person incapable of safely
21 driving a motor vehicle;

22 D. who ~~[within any ten-year period]~~ is ~~[three~~
23 ~~times]~~ convicted of driving a motor vehicle while under the
24 influence of intoxicating liquor or ~~[narcotic drug regardless~~
25 ~~of whether the convictions are under the laws or ordinances of~~

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1 ~~this state or any municipality or county of this state or under~~
2 ~~the laws or ordinances of any other state, the District of~~
3 ~~Columbia or any governmental subdivision thereof except as~~
4 ~~provided in the Ignition Interlock Licensing Act. Ten years~~
5 ~~after being so convicted for the third time, the person may~~
6 ~~apply to any district court of this state for restoration of~~
7 ~~the license, and the court, upon good cause being shown, may~~
8 ~~order restoration of the license applied for; provided that the~~
9 ~~person has not been subsequently convicted of driving a motor~~
10 ~~vehicle while under the influence of intoxicating liquor or~~
11 ~~drugs in the ten-year period prior to his request for~~
12 ~~restoration of his license. Upon issuance of the order of~~
13 ~~restoration, a certified copy shall immediately be forwarded to~~
14 ~~the division, and if the person is otherwise qualified for the~~
15 ~~license applied for, the three previous convictions shall not~~
16 ~~prohibit issuance of the license applied for. Should the~~
17 ~~person be subsequently once convicted of driving a motor~~
18 ~~vehicle while under the influence of intoxicating liquor or~~
19 ~~drugs, the division shall revoke his license for five years,~~
20 ~~after which time he may apply for restoration of his license as~~
21 ~~provided in this subsection] drugs pursuant to the provisions~~
22 ~~of Section 66-8-102 NMSA 1978 except as provided in the~~
23 Ignition Interlock Licensing Act;

24 E. who has previously been afflicted with or who is
25 suffering from any mental disability or disease that would

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1 render [~~him~~] the person unable to drive a motor vehicle with
2 safety upon the highways and who has not, at the time of
3 application, been restored to health;

4 F. who is required by the Motor Vehicle Code to
5 take an examination, unless [~~he~~] the person has successfully
6 passed the examination;

7 G. who is required under the laws of this state to
8 deposit proof of financial responsibility and who has not
9 deposited the proof;

10 H. when the director has good cause to believe that
11 the operation of a motor vehicle on the highways by the person
12 would be inimical to public safety or welfare; or

13 I. as a motorcycle driver who is less than eighteen
14 years of age and who has not presented a certificate or other
15 evidence of having successfully completed a motorcycle driver
16 education program licensed or offered in conformance with rules
17 of the bureau. "

18 Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 251, as amended) is amended to read:

20 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION. --

21 A. The division shall immediately revoke the
22 instruction permit, driver's license or provisional license of
23 a driver upon receiving a record of the driver's adjudication
24 as a delinquent for or conviction of any of the following
25 offenses, whether the offense is under any state law or local

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1 ordinance, when the conviction or adjudication has become
2 final:

3 (1) manslaughter or negligent homicide
4 resulting from the operation of a motor vehicle;

5 (2) any offense rendering a person a "first
6 offender" as defined in the Motor Vehicle Code [~~if that person~~
7 ~~does not attend a driver rehabilitation program pursuant to~~
8 ~~Subsection E of Section 66-8-102 NMSA 1978~~];

9 (3) any offense rendering a person a
10 "subsequent offender" as defined in the Motor Vehicle Code;

11 (4) any felony in the commission of which a
12 motor vehicle is used;

13 (5) failure to stop and render aid as required
14 under the laws of this state in the event of a motor vehicle
15 accident resulting in the death or personal injury of another;

16 (6) perjury or the making of a false affidavit
17 or statement under oath to the division under the Motor Vehicle
18 Code or under any other law relating to the ownership or
19 operation of motor vehicles; or

20 (7) conviction or forfeiture of bail not
21 vacated upon three charges of reckless driving committed within
22 a period of twelve months.

23 B. Except as provided in the Ignition Interlock
24 Licensing Act, a person whose license has been revoked under
25 this section, except as provided in Subsection C, D, [~~or~~] E or

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1 F of this section, shall not be entitled to apply for or
2 receive a new license until the expiration of one year from the
3 date of the last application on which the revoked license was
4 surrendered to and received by the division, if no appeal is
5 filed, or one year from the date that the revocation is final
6 and [~~he has exhausted his~~] all rights to an appeal have been
7 exhausted.

8 C. A person who upon adjudication as a delinquent
9 or conviction is subject to license revocation under this
10 section for an offense pursuant to which [~~he~~] the person was
11 also subject to license revocation pursuant to Section 66-8-111
12 NMSA 1978 shall have his license revoked for that offense for a
13 combined period of time equal to one year.

14 D. Upon receipt of an order from a court pursuant
15 to Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-
16 22 NMSA 1978, the division shall revoke the driver's license or
17 driving privileges for a period of time in accordance with
18 these provisions.

19 E. Upon receipt from a district court of a record
20 of conviction for the offense of shooting at or from a motor
21 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or
22 of a conviction for a conspiracy or an attempt to commit that
23 offense, the division shall revoke the driver's [~~licenses~~]
24 license or driving privileges of the convicted person. A
25 person whose license or privilege has been revoked pursuant to

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1 the provisions of this subsection shall not be entitled to
2 apply for or receive any new license or privilege until the
3 expiration of one year from the date of the last application on
4 which the revoked license was surrendered to and received by
5 the division, if no appeal is filed, or one year from the date
6 that the revocation is final and [~~the person has exhausted his~~]
7 all rights to an appeal have been exhausted.

8 F. Except as provided in the Ignition Interlock
9 Licensing Act, the division shall not restore the instruction
10 permit, driver's license or provisional license of a first or
11 subsequent offender as defined in the Motor Vehicle Code. "

12 Section 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
13 Chapter 139, Section 54, as amended) is amended to read:

14 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
15 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
16 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

17 A. It is unlawful for a person who is under the
18 influence of intoxicating liquor to drive a vehicle within this
19 state.

20 B. It is unlawful for a person who is under the
21 influence of any drug to a degree that renders [~~him~~] the person
22 incapable of safely driving a vehicle to drive a vehicle within
23 this state.

24 C. It is unlawful for:

25 (1) a person who has an alcohol concentration

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1 of eight one hundredths or more in his blood or breath to drive
2 a vehicle within this state; or

3 (2) a person who has an alcohol concentration
4 of four one hundredths or more in [~~his~~] the person's blood or
5 breath to drive a commercial motor vehicle within this state.

6 D. Aggravated driving while under the influence of
7 intoxicating liquor or drugs consists of a person who:

8 (1) has an alcohol concentration of sixteen
9 one hundredths or more in [~~his~~] the person's blood or breath
10 while driving a vehicle within this state;

11 (2) has caused bodily injury to a human being
12 as a result of the unlawful operation of a motor vehicle while
13 driving under the influence of intoxicating liquor or drugs; or

14 (3) refused to submit to chemical testing, as
15 provided for in the Implied Consent Act, and in the judgment of
16 the court, based upon evidence of intoxication presented to the
17 court, was under the influence of intoxicating liquor or drugs.

18 E. A person under first conviction pursuant to this
19 section shall be punished, notwithstanding the provisions of
20 Section 31-18-13 NMSA 1978, by imprisonment for not more than
21 ninety days or by a fine of not more than five hundred dollars
22 (\$500), or both; provided that if the sentence is suspended in
23 whole or in part or deferred, the period of probation may
24 extend beyond ninety days but shall not exceed one year. Upon
25 a first conviction pursuant to this section, an offender may be

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1 sentenced to not less than forty-eight hours of community
2 service or a fine of three hundred dollars (\$300). The
3 offender shall be ordered by the court to participate in and
4 complete a screening program described in Subsection K of this
5 section and to attend a driver rehabilitation program for
6 alcohol or drugs, also known as a "DWI school", approved by the
7 bureau and also may be required to participate in other
8 rehabilitative services as the court shall determine to be
9 necessary. In addition to those penalties, when an offender
10 commits aggravated driving while under the influence of
11 intoxicating liquor or drugs, the offender shall be sentenced
12 to not less than forty-eight consecutive hours in jail. If an
13 offender fails to complete, within a time specified by the
14 court, any community service, screening program, treatment
15 program or DWI school ordered by the court or fails to comply
16 with any other condition of probation, the offender shall be
17 sentenced to not less than an additional forty-eight
18 consecutive hours in jail. Notwithstanding any provision of
19 law to the contrary, if an offender's sentence was suspended or
20 deferred in whole or in part, and the offender violates any
21 condition of probation, the court may impose any sentence that
22 the court could have originally imposed and credit shall not be
23 given for time served by the offender on probation. [Any] A
24 jail sentence imposed pursuant to this subsection for failure
25 to complete, within a time specified by the court, any

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1 community service, screening program, treatment program or DWI
2 school ordered by the court or for aggravated driving while
3 under the influence of intoxicating liquor or drugs shall not
4 be suspended, deferred or taken under advisement. On a first
5 conviction pursuant to this section, [~~any~~] time spent in jail
6 for the offense prior to the conviction for that offense shall
7 be credited to any term of imprisonment fixed by the court. A
8 deferred sentence pursuant to this subsection shall be
9 considered a first conviction for the purpose of determining
10 subsequent convictions.

11 F. A second or third conviction pursuant to this
12 section shall be punished, notwithstanding the provisions of
13 Section 31-18-13 NMSA 1978, by imprisonment for not more than
14 three hundred sixty-four days or by a fine of not more than one
15 thousand dollars (\$1,000), or both; provided that if the
16 sentence is suspended in whole or in part, the period of
17 probation may extend beyond one year but shall not exceed five
18 years. Notwithstanding any provision of law to the contrary
19 for suspension or deferment of execution of a sentence:

20 (1) upon a second conviction, an offender
21 shall be sentenced to a jail term of not less than ninety-six
22 consecutive hours, forty-eight hours of community service and a
23 fine of five hundred dollars (\$500). In addition to those
24 penalties, when an offender commits aggravated driving while
25 under the influence of intoxicating liquor or drugs, the

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1 offender shall be sentenced to a jail term of not less than
2 ninety-six consecutive hours. If an offender fails to
3 complete, within a time specified by the court, any community
4 service, screening program or treatment program ordered by the
5 court, the offender shall be sentenced to not less than an
6 additional seven consecutive days in jail. A penalty imposed
7 pursuant to this paragraph shall not be suspended or deferred
8 or taken under advisement; and

9 (2) upon a third conviction, an offender shall
10 be sentenced to a jail term of not less than thirty consecutive
11 days and a fine of seven hundred fifty dollars (\$750). In
12 addition to those penalties, when an offender commits
13 aggravated driving while under the influence of intoxicating
14 liquor or drugs, the offender shall be sentenced to a jail term
15 of not less than sixty consecutive days. If an offender fails
16 to complete, within a time specified by the court, ~~[any]~~ a
17 screening program or treatment program ordered by the court,
18 the offender shall be sentenced to not less than an additional
19 sixty consecutive days in jail. A penalty imposed pursuant to
20 this paragraph shall not be suspended or deferred or taken
21 under advisement.

22 G. Upon a fourth conviction pursuant to this
23 section, an offender is guilty of a fourth degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of eighteen

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1 months, six months of which shall not be suspended, deferred or
2 taken under advisement.

3 H. Upon a fifth conviction pursuant to this
4 section, an offender is guilty of a fourth degree felony and,
5 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
6 shall be sentenced to a term of imprisonment of two years, one
7 year of which shall not be suspended, deferred or taken under
8 advisement.

9 I. Upon a sixth conviction pursuant to this
10 section, an offender is guilty of a third degree felony and,
11 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
12 shall be sentenced to a term of imprisonment of thirty months,
13 eighteen months of which shall not be suspended, deferred or
14 taken under advisement.

15 J. Upon a seventh or subsequent conviction pursuant
16 to this section, an offender is guilty of a third degree felony
17 and, notwithstanding the provisions of Section 31-18-15 NMSA
18 1978, shall be sentenced to a term of imprisonment of three
19 years, two years of which shall not be suspended, deferred or
20 taken under advisement.

21 K. Upon any conviction pursuant to this section, an
22 offender shall be required to participate in and complete,
23 within a time specified by the court, an alcohol or drug abuse
24 screening program approved by the department of finance and
25 administration and, if necessary, a treatment program approved

1 by the court. The requirement imposed pursuant to this
2 subsection shall not be suspended, deferred or taken under
3 advisement.

4 L. Upon a second or third conviction pursuant to
5 this section, an offender shall be required to participate in
6 and complete, within a time specified by the court:

7 (1) not less than a twenty-eight-day
8 inpatient, residential or in-custody substance abuse treatment
9 program approved by the court;

10 (2) not less than a ninety-day outpatient
11 treatment program approved by the court;

12 (3) a drug court program approved by the
13 court; or

14 (4) any other substance abuse treatment
15 program approved by the court.

16 The requirement imposed pursuant to this subsection shall
17 not be suspended, deferred or taken under advisement.

18 M. Upon a felony conviction pursuant to this
19 section, the corrections department shall provide substance
20 abuse counseling and treatment to the offender in its custody.
21 While the offender is on probation or parole under its
22 supervision, the corrections department shall also provide
23 substance abuse counseling and treatment to the offender or
24 shall require the offender to obtain substance abuse counseling
25 and treatment.

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1 ~~[N. Upon a first conviction for aggravated driving~~
2 ~~while under the influence of intoxicating liquor or drugs~~
3 ~~pursuant to the provisions of Subsection D of this section, as~~
4 ~~a condition of probation, an offender shall be required to have~~
5 ~~an ignition interlock device installed and operating for a~~
6 ~~period of one year on all motor vehicles driven by the~~
7 ~~offender, pursuant to rules adopted by the bureau. Unless~~
8 ~~determined by the sentencing court to be indigent, the offender~~
9 ~~shall pay all costs associated with having an ignition~~
10 ~~interlock device installed on the appropriate motor vehicles.~~
11 ~~If an offender drives a motor vehicle that does not have an~~
12 ~~ignition interlock device installed on the motor vehicle, the~~
13 ~~offender may be in violation of the terms and conditions of his~~
14 ~~probation.~~

15 ~~0. Upon a first conviction for driving while under~~
16 ~~the influence of intoxicating liquor or drugs pursuant to the~~
17 ~~provisions of Subsection A, B or C of this section, as a~~
18 ~~condition of probation, an offender may be required to have an~~
19 ~~ignition interlock device installed and operating for a period~~
20 ~~of one year on all motor vehicles driven by the offender,~~
21 ~~pursuant to rules adopted by the bureau. Unless determined by~~
22 ~~the sentencing court to be indigent, the offender shall pay all~~
23 ~~costs associated with having an ignition interlock device~~
24 ~~installed on the appropriate motor vehicles. If an offender~~
25 ~~drives a motor vehicle that does not have an ignition interlock~~

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1 ~~device installed on the motor vehicle, the offender may be in~~
2 ~~violation of the terms and conditions of his probation.~~

3 ~~P. Upon any subsequent conviction pursuant to this~~
4 ~~section, as a condition of probation, a subsequent offender~~
5 ~~shall be required to have an ignition interlock device~~
6 ~~installed and operating for a period of at least one year on~~
7 ~~all motor vehicles driven by the subsequent offender, pursuant~~
8 ~~to rules adopted by the bureau. Unless determined by the~~
9 ~~sentencing court to be indigent, the subsequent offender shall~~
10 ~~pay all costs associated with having an ignition interlock~~
11 ~~device installed on the appropriate motor vehicles. If a~~
12 ~~subsequent offender drives a motor vehicle that does not have~~
13 ~~an ignition interlock device installed on the motor vehicle,~~
14 ~~the subsequent offender may be in violation of the terms and~~
15 ~~conditions of his probation.]~~

16 N. Upon a conviction for driving while under the
17 influence of intoxicating liquor or drugs pursuant to the
18 provisions of this section, the offender's driver's license
19 shall be revoked and driving privileges shall be denied.
20 Within twenty-four hours of conviction, the court shall provide
21 the motor vehicle division with proof of the conviction. Upon
22 receipt of proof of conviction from the court, the motor
23 vehicle division shall revoke or deny the offender's driver's
24 license or driving privileges. Nothing in this section shall
25 prohibit the offender from applying for an ignition interlock

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1 license pursuant to the Ignition Interlock Licensing Act.

2 [Q.] O. In the case of a first, second or third
3 offense under this section, the magistrate court has concurrent
4 jurisdiction with district courts to try the offender.

5 [R.] P. A conviction pursuant to a municipal or
6 county ordinance in New Mexico or a law of any other
7 jurisdiction, territory or possession of the United States or
8 of a tribe, when that ordinance or law is equivalent to New
9 Mexico law for driving while under the influence of
10 intoxicating liquor or drugs, and prescribes penalties for
11 driving while under the influence of intoxicating liquor or
12 drugs, shall be deemed to be a conviction pursuant to this
13 section for purposes of determining whether a conviction is a
14 second or subsequent conviction.

15 [S.] Q. In addition to any other fine or fee that
16 may be imposed pursuant to the conviction or other disposition
17 of the offense under this section, the court may order the
18 offender to pay the costs of any court-ordered screening and
19 treatment programs.

20 [T.] R. As used in this section:

21 (1) "bodily injury" means an injury to a
22 person that is not likely to cause death or great bodily harm
23 to the person, but does cause painful temporary disfigurement
24 or temporary loss or impairment of the functions of any member
25 or organ of the person's body;

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(2) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

(3) "conviction" means an adjudication of guilt and does not include imposition of a sentence."